

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

Encore Wire Corporation

Plaintiff,

v.

Copperweld Bimetallics, LLC

Defendant.

CIVIL ACTION NO. ____

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Encore Wire Corporation (“Encore Wire”) brings this Complaint for Declaratory Judgment (“Complaint”) against Defendant Copperweld Bimetallics, LLC (“Copperweld”).

NATURE OF THE ACTION

1. This is a civil action by Encore Wire, a manufacturer of copper and aluminum wire, for a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202, that it has not made false or misleading statements or claims in violation of the Lanham Act and/or Texas state law.

THE PARTIES

2. Encore Wire is a Delaware corporation with its principal place of business in McKinney, Texas.

3. On information and belief, Copperweld is a Delaware limited liability company having a principal place of business located at 5141 Virginia Way #410, Brentwood, TN 37027. Copperweld does not maintain a registered agent in Texas. Copperweld may be served with process by serving the Texas Secretary of State at 1019 Brazos, Room 105, Austin, Texas 78701.

JURISDICTION AND VENUE

4. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Encore Wire seeks a declaration from the Court that none of the materials and/or statements made in the

podcast at issue constitute false or misleading advertising in violation of Section 43(a) of the Lanham Act, 15 § 1125(a) or Texas state law.

5. This Court has subject matter jurisdiction in this action pursuant to 28 U.S.C. §§ 1331 and 2201.

6. This Court has personal jurisdiction over Copperweld as Copperweld has accused Encore Wire of engaging in false and misleading advertising directed against Copperweld in this district. Furthermore, on information and belief, Copperweld regularly does and/or transacts business in this state, contracts to supply goods in this state, and derives substantial revenue from this state such that it knows or should expect its actions to have consequences that may give rise to litigation in this state and district.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) and (3), because a substantial part of the events or omissions giving rise to Encore Wire's claim occurred in this district and because Copperweld is subject to the Court's personal jurisdiction.

FACTUAL BACKGROUND

8. Founded in 1989, Encore Wire is a leading manufacturer of copper and aluminum residential, commercial and industrial building wire.

9. Encore Wire manufactures a broad range of electrical building wire for interior wiring and focuses on maintaining a high level of customer service with low-cost production and a breadth of products.

10. On or around October 2021, Encore Wire Manager of Codes and Standards Paul Abernathy and Supervisor of Codes and Standards Kevin Porter started a podcast called "Encore Wire Codes and Standards." These are a series of podcasts, each having a specific industry related topic.

11. On or around February 5, 2022, the Encore Wire Codes and Standards Podcast aired

a podcast episode, which included the presentation of some materials (together, the “Podcast”). The Podcast was focused on a discussion related to Copper Clad Aluminum (“CCA”) wire. Specifically, Mr. Abernathy and Mr. Porter discussed the history and specific features of CCA wire.

12. The Podcast focused on CCA. At no time was Copperweld or any other company referenced during the Podcast.

13. Despite the fact that Copperweld was never named or referenced in the Podcast, Encore Wire received a cease-and-desist letter from Copperweld’s counsel dated March 14, 2022.

14. In this letter, Copperweld accused Encore Wire of disseminating false and misleading advertising under the Lanham Act and/or Texas unfair competition law, based on alleged misstatements about CCA wire. Specifically, the letter asserts the following claims:

- a. That the Podcast implies that CCA is “inherently dangerous” because “the ASTM B566 does not require an AA 8000 series aluminum core.”
- b. That the Podcast repeatedly states that CCA is covered by a “veneer” of copper and that that implies it is a “thin decorative covering.”
- c. That a statement that CCA is “‘typically’ only ‘ten to fifteen percent copper by weight’” is false.
- d. That a statement that there are “no real tangible benefits” to CCA and that purchasers of CCA may “end up paying more for something that brings you no value and no immediate return on your long-term investment” is false and misleading.

15. Copperweld’s letter demanded that Encore Wire cease further distribution or dissemination of the Podcast and materials, provide Copperweld with an accounting of Encore Wire’s sales, and notify all “recipients” about the alleged falsity of the statements made in the

letter as well as publish a “public retraction.” *See* Ex. 1.

16. The statement and accompanying materials were true at the time they were first made and are still true today.

17. This controversy is between parties having adverse legal interests and is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment under 28 U.S.C. § 2201(a) as to whether the statements made in the Podcast are false or misleading.

COUNT I—DECLARATORY JUDGMENT THAT CLAIMS MADE IN ENCORE WIRE’S PODCAST AND MATERIALS ARE NOT FALSE OR MISLEADING UNDER THE LANHAM ACT

18. Encore Wire restates and incorporates by reference the foregoing paragraphs as though set forth fully herein.

19. Copperweld has alleged, and continues to allege, that Encore Wire’s Podcast and materials constitute false and misleading advertising pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

20. The statements made in the Podcast and materials were and are true.

21. A declaration is necessary and appropriate at this time to affirm that the statements made in the Podcast and materials do not constitute false and/or misleading advertising under the Lanham Act.

22. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Encore Wire seeks a declaration that the claims made in the Podcast and materials do not violate the Lanham Act.

COUNT II—DECLARATORY JUDGMENT THAT CLAIMS MADE IN THE PODCAST AND MATERIALS ARE NOT FALSE OR MISLEADING PURSUANT TO TEXAS STATE LAW

23. Encore Wire restates and incorporates by reference the foregoing paragraphs as though set forth fully herein.

24. Copperweld has alleged, and continues to allege, that Encore Wire's Podcast and materials constitute false and misleading advertising pursuant to Texas state law.

25. The statements made in the Podcast and materials were and are true.

26. A declaration is necessary and appropriate at this time to affirm that the statements made in the Podcast and materials do not constitute false and/or misleading advertising under Texas state law

27. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Encore Wire seeks a declaration that the statements made in the Podcast and materials do not violate Texas state law.

PRAYER FOR RELIEF

WHEREFORE, Encore Wire prays for a declaratory judgment against Copperweld as follows:

- A. A declaration that the statements made in the Podcast and materials do not constitute false or misleading advertising under the Lanham Act;
- B. A declaration that the statements made in the Podcast and materials do not constitute false or misleading advertising under Texas state law;
- C. An award of costs and attorneys' fees to Encore Wire; and
- D. Such other relief as this Court or a jury may deem proper and just under the circumstances.

JURY TRIAL DEMAND

Encore Wire requests a trial by jury on all issues so triable.

Dated: March 24, 2022

Respectfully submitted,

/s/ Edward F. Fernandes

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